

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Donald Ferguson,

Plaintiff,

v.

Case No. 12-11702

Corizon, *et al.*

Sean F. Cox

United States District Court Judge

Defendants.

ORDER
ADOPTING REPORT AND RECOMMENDATION

Acting *pro se*, Plaintiff Donald Ferguson (“Plaintiff”) filed this prisoner civil rights action, pursuant to § 1983, on April 17, 2012. Plaintiff’s Complaint alleges that Defendants violated his constitutional rights by acting with deliberate indifference to his serious medical needs when Defendant was denied a second surgery on his hand following an injury and an initial surgery.

This action was referred to Magistrate Judge Michael Hluchaniuk for all pretrial proceedings. (Docket Entry no. 8). On December 13, 2012, Magistrate Judge Hluchaniuk filed an Order Directing Defendant To Answer Or Otherwise Respond to the Complaint. (Docket Entry No. 20). That order acknowledged that Defendants had filed a “Waiver of Answer Pursuant to 42 U.S.C. § 1997e(g)(1)” and directed Defendants to file an answer or otherwise respond to the complaint by January 4, 2013. (*Id.*)

In response, Defendants filed a Motion for Summary Judgment on January 4, 2013.

After full briefing by the parties, Magistrate Judge Hluchaniuk issued a Report and

Recommendation (“R&R”) on July 25, 2013, wherein he recommends that Defendant’s Motion for Summary Judgment be granted. (Docket Entry No. 34).

Plaintiff then filed the instant Objections to the R&R. Plaintiff asserts four objections to the R&R.

In his First and Second Objections, Plaintiff asserts that the Magistrate Judge erred because he gave the facts set forth in Defendant’s motion “greater veracity” than the facts alleged in his complaint and his Declaration. The Court finds these objections without merit. The Magistrate Judge did not recommend that the Court grant summary judgment to Defendants based upon factual *assertions* made by Defendants. To the contrary, he made his recommendation based on *evidence* submitted by Defendants (i.e. medical records). In addition, Plaintiff’s Declaration disputing the adequacy of his medical treatment is insufficient to displace the medical records kept by the prison in the ordinary course of business. *See Hann v. State of Michigan*, 2010 U.S. Dist. LEXIS 24143 (E.D. Mich. 2010); *see also Dulaney v. Carnaham*, 132 F.3d 1234, 1240 (8th Cir. 1997) (In the face of medical records indicating that specific treatment was provided, an inmate cannot create a question of fact by asserting that he did not feel the treatment received was adequate.)

In his Third Objection, Plaintiff disputes the Magistrate Judge’s conclusion that he could not establish deliberate indifference. The Court finds this objection without merit because it agrees with Magistrate Judge Hluchaniak’s analysis and conclusion regarding this issue. (*See* R&R at 16-19).

As his fourth and final objection, Plaintiff objects to the Magistrate Judge’s conclusion that he presented no evidence to support his claim against Corizon, suggesting that he should

have been provided unspecified discovery as to this issue. The Court finds this objection without merit. As explained in the R&R, in response to Defendants' properly supported motion, Plaintiff did not meet his burden of showing why addition discovery was necessary. Plaintiff offered no affidavit in support of his request and he failed to identify any reason why he did not seek leave from the Court to conduct discovery or otherwise attempt to obtain discovery from Corizon during the six months during which the motion was pending. (*See* R&R at 20-23).

Accordingly, the Court finds Plaintiff's Objections to the R&R to be without merit and IT IS ORDERED that the July 25, 2013 R&R is hereby ADOPTED.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment is GRANTED and this action shall be DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: September 4, 2013

S/ Sean F. Cox
Sean F. Cox
U. S. District Court Judge

I hereby certify that on September 4, 2013, the foregoing document was served upon counsel of record by electronic means and upon Donald Ferguson by First Class Mail at the address below:

Donald Ferguson #122782
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

Dated: September 4, 2013

S/ J. McCoy
Case Manager